

NEW HAMPSHIRE CHARTER SCHOOLS PROGRAM

LOTTERY SELECTION GUIDELINES

I. Actual Text - RSA 194-B:9

194-B:9 Chartered Public Schools; Pupil Selection; Enrollment; Separation. –

I. Except as provided for under RSA 194-B:8, IV:

(a) Chartered public schools may set maximum enrollment as they deem appropriate.

(b) Chartered public schools may limit enrollment to specific grade or age levels, pupil needs, or areas of academic focus including, but not limited to, at-risk pupils, vocational education pupils, mathematics, science, the arts, history, or languages.

(c)(1) Chartered public schools may select pupils on the basis of aptitude, academic achievement, or need, provided that such selection is directly related to the academic goals of the school.

(2) If the number of otherwise eligible applicants to a particular chartered public school exceeds that school's maximum published enrollment, that school shall use lottery selection as a basis for admission.

(3) If the number of otherwise eligible applicants to chartered public schools located inside and outside the school district exceeds that district's published maximum percentage of pupils authorized to attend such schools, the district shall use lottery selection as a basis for pupil eligibility, and in accordance with RSA 194-B:2, IV.

II. A pupil may withdraw from a chartered public school at any time and enroll in a public school where the pupil resides, except that no pupil shall change schools more than once each school year. That pupil's local school board may waive this limitation after a hearing.

III. A pupil may be suspended or expelled from a chartered public school based on criteria determined by the board of trustees consistent with the advice of the principal and teachers and in conformance with RSA 193:13. No public school shall be obligated to enroll an expelled pupil.

IV. For the purpose of this chapter, any resident pupil enrolled in a chartered public school is to be considered reassigned to the chartered public school for purposes of school attendance.

II. Actual Text – United States Department of Education, Charter Schools Program (CSP), Title V, Part B of the ESEA, Nonregulatory Guidance, (E) Lottery, Recruitment, and Admissions

E-1. What is a lottery for purposes of the CSP?

A lottery is a random selection process by which applicants are admitted to the charter school. 20 U.S.C. 7221i(1)(H).

E-2. Under what circumstances must a charter school use a lottery?

A charter school receiving CSP funds must use a lottery if more students apply for admission to the charter school than can be admitted. A charter school with fewer applicants than spaces available does not need to conduct a lottery. 20 U.S.C. 7221i(1)(H).

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E-3. Are weighted lotteries permissible?

Weighted lotteries (i.e., lotteries that give additional weight to individual students who are identified as part of a specified set of students, but do not reserve or set aside seats for individual students or sets of students) are permitted only in certain circumstances.

First, weighted lotteries may be used when they are necessary to comply with title VI of the Civil Rights Act of 1964; title IX of the Education Amendments of 1972; section 504 of the Rehabilitation Act of 1973; title II of the Americans with Disabilities Act of 1990, as applicable; the equal protection clause of the Constitution; or applicable State law.

Second, a charter school may weight its lottery to give a slightly better chance for admission to students seeking to change schools under the public school choice provisions of title I, part A of the ESEA for the limited purpose of providing greater choice to students covered by those provisions. For example, a charter school might provide each student seeking a transfer under title I with two or more chances to win the lottery, while all other students would have only one chance to win. 20 U.S.C. 7221i(1)(H).

Third, consistent with section 5204(a)(1) of the ESEA¹, a charter school may weight its lottery to give slightly better chances for admission to all or a subset of educationally disadvantaged students if State law permits the use of weighted lotteries in favor of such students. Permission could be evidenced by the fact that weighted lotteries for such students are expressly permitted under the State charter school law, a State regulation, or a written State policy consistent with the State charter school law or regulation, or, in the absence of express authorization, confirmation from the State's Attorney General, in writing, that State law permits the use of weighted lotteries in favor of such students. Thus, if a State's charter school law permits charter schools to give additional weight to educationally disadvantaged students (or a subset thereof), a charter school in that State could weight its lottery in favor of such students or participate in a centralized lottery for multiple public schools that is weighted in favor of such students and remain eligible for CSP funding. For the purpose of this guidance, educationally disadvantaged students are students in the categories described in section 1115(b)(2) of the ESEA, which include students who are economically disadvantaged, students with disabilities, migrant students, limited English proficient students, neglected or delinquent students, and homeless students.

Weighted lotteries may not be used for the purpose of creating schools exclusively to serve a particular subset of students. In addition, the Department strongly encourages charter schools that use weighted lotteries to do so as part of a broader strategy that includes fulfillment of their existing responsibilities related to outreach, recruitment, and retention for all students, including educationally disadvantaged students.

¹ Section 5204(a)(1) of the ESEA is the provision of the CSP statute regarding selection criteria for State educational agencies that focuses on the contribution that the CSP will make to assisting educationally disadvantaged and other students in meeting State academic content and achievement standards.

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E-3a. May existing grantees weight, or allow charter schools in the State to weight, their lotteries under the circumstances described in E-3?

An existing grantee that wishes to use, or allow charter schools receiving CSP funds to use, weighted lotteries under the circumstances in E-3 must seek approval from the Department to do so by amending its grant application. Requests for approval to use weighted lotteries should be submitted to the Department and include the following:

- 1) Information concerning the circumstances in which a weighted lottery would be used, including the specific categories of students the weighted lottery would favor;
- 2) Evidence that –
 - a) When seeking approval to use weighted lotteries under the first circumstance in E-3, the use of weighted lotteries is necessary to comply with Federal or State law; or
 - b) When seeking approval to use weighted lotteries under the second or third circumstances in E-3, State law permits such use, which could be evidenced by the fact that weighted lotteries for such students are expressly permitted under the State charter school law, a State regulation, or a written State policy consistent with the State charter school law or regulation, or, in the absence of express authorization, confirmation from the State's Attorney General, in writing, that State law permits the use of weighted lotteries in favor of such students;
- 3) Information concerning the mechanisms that exist (if any) for an oversight entity (e.g., the SEA or an authorized public chartering agency) to review, approve, or monitor specific lottery practices, including establishment of weight amounts if applicable;
- 4) Information concerning how the use of a weighted lottery for a permitted purpose is within the scope and objectives of the approved project; and
- 5) Information concerning the amount or range of lottery weights that will be employed or permitted and the rationale for these weights.

An applicant for future CSP competitions that wishes to use a weighted lottery should provide the pertinent information about its proposed lottery in its grant application.

E-4. May a charter school exempt certain categories of applicants from the lottery and admit them automatically?

A charter school that is oversubscribed and, consequently, must use a lottery, generally must include in that lottery all eligible applicants for admission. A charter school may exempt from the lottery only those students who are deemed to have been admitted to the charter school already and, therefore, do not need to reapply.

6/12/12

12/16/13 - Updated to reflect new language for RSA 194-B:11, III

10/31/14 - Updated to reflect revised USDOE Charter Schools Program Nonregulatory Guidance

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Specifically, the following categories of applicants may be exempted from the lottery on this basis:

- a) Students who are enrolled in a public school at the time it is converted into a public charter school;
- b) Students who are eligible to attend, and are living in the attendance area of, a public school at the time it is converted into a public charter school;
- c) Siblings of students already admitted to or attending the same charter school;
- d) Children of a charter school's founders, teachers, and staff (so long as the total number of students allowed under this exemption constitutes only a small percentage of the school's total enrollment); and
- e) Children of employees in a work-site charter school, (so long as the total number of students allowed under this exemption constitutes only a small percentage of the school's total enrollment).

When recruiting students, charter schools should target all segments of the parent community. A charter school must recruit in a manner that does not discriminate against students of a particular race, color, national origin (including English language learners), religion, or sex, or against students with disabilities; in order to meet this goal, charter schools should consider additional recruitment efforts toward groups that might otherwise have limited opportunities to participate in the charter school's programs. Once a student has been admitted to the charter school through an appropriate process, he or she may remain in attendance through subsequent grades. A new applicant for admission to the charter school, however, would be subject to the lottery if, as of the application closing date, the total number of applicants exceeds the number of spaces available at the charter school. 20 U.S.C. 7221b(b)(3)(I) and 7221i(1)(E), (G), and (H).

E-5. May a charter school create separate lottery pools for girls and boys, in order to ensure that it has a reasonably equal gender balance?

No, a charter school receiving CSP funds must hold one lottery that provides qualified students with an equal opportunity to attend the school. Therefore, a charter school receiving funds under the program is precluded from holding separate lotteries for boys and girls. Nor may a school weight its lottery in favor of one gender over another. A school seeking to increase participation of one gender should do so by targeting additional recruitment efforts toward that gender. 20 U.S.C. 7221b(b)(3)(I) and 7221i(1)(H).

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E-6. In addition to title V, part B, subpart 1 of the ESEA, what other statutory or regulatory authorities should a charter school receiving a CSP grant consider when developing its admissions policies?

To be eligible for CSP start-up grants, a charter school's admissions practices must comply with applicable Federal and State laws. Exemptions from the lottery specified in E-4 above are permissible only to the extent that they are consistent with the State's charter school law, other applicable State laws, the school's charter, and any applicable title VI desegregation plans or court orders requiring desegregation. A charter school's admissions practices must also comply with part B of the Individuals with Disabilities Education Act and Federal civil rights laws, including, but not limited to, title VI of the Civil Rights Act of 1964; section 504 of the Rehabilitation Act of 1973; and title II of the Americans with Disabilities Act of 1990, as applicable. 20 U.S.C. 7221(i)(1)(E), (G), (H), and (K). See also A-3.

E-7. What are a charter school's responsibilities with regard to outreach and recruitment?

Section 5203(b)(3)(I) of the ESEA requires charter school grant and subgrant recipients to inform students in the community about the charter school and to give each student "an equal opportunity to attend the charter school". Further, section 5203(b)(3)(E) of the ESEA requires charter schools receiving CSP grants or subgrants to involve parents and other members of the community in the planning, program design, and implementation of the charter school.

As noted in E-4 above, charter schools may not discriminate in recruiting. Charter schools should reach out broadly to the community, including to English language learners and students with disabilities.

E-8. May a tuition-based private preschool program that "feeds into" an elementary public charter school at the kindergarten level permit children enrolled in the preschool program to continue in the elementary program without going through a lottery process?

No. In order to qualify for funds under the CSP, a "charter school" must, in addition to meeting other requirements, be created as a public school and may not charge tuition. Therefore, the private preschool would not qualify as a charter school and would have to be operated separately from the elementary "charter school". Accordingly, all applicants to the charter school, including students attending the private preschool, would have to be selected by lottery if there are more applicants than there are spaces available. See also B-10.

However, the statute does not preclude an elementary charter school in this type of situation from holding its lottery a few years early (e.g., when students are ready to enroll in the preschool). Under this approach, the charter school would have an affirmative responsibility to inform prospective applicants that winning the lottery does not require them to enroll in the private preschool. Thus, any child selected through the lottery would be guaranteed a slot in kindergarten a few years later, whether or not he or she enrolls in the preschool program.

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Additionally, given the high mobility of children and families, schools that choose to exercise this option should ensure that families in the area, including those new to the area or that were not aware of the previous lottery are given the opportunity to apply for admission. Such admissions policies must meet the requirements of the CSP and might include holding a second lottery to fill vacancies created by normal attrition or the failure of early lottery winners to enroll in the charter school. 20 U.S.C. 7221b(b)(3)(E) and (b)(3)(I); and 7221i(1)(F) and (1)(H).

III. Department Comment:

A lottery is a random selection process by which all eligible applicants have a fair and equal chance of being admitted to a charter school, without any stipulations. A lottery selection must be in place if the charter school has more applicants than available openings.

After an open enrollment period, if there are no available openings, the names of applicants shall be placed on a wait list in the order his/her name was randomly selected. If an opening occurs in a given grade, applicants on the wait list will be contacted according to their specific order.

Placement tests shall not be administered to potential applicants in order to determine eligibility.

On a consistent basis, charter schools shall clearly communicate their mission statement to parents/guardians and students.

Each charter school shall create their own lottery guidelines to include a wait list procedure which shall be reviewed and approved by their Board of Trustees.

Local Authorized Charter Schools

For local authorized charter schools, eligible students who reside in the district, where the school is located, shall be given admission preference over a nonresident student.

Special Education

Prior to attending a charter school, parents of children with an Individualized Education Plan (IEP) shall meet with their local school district to ensure that appropriate special education services will be provided. Please refer to RSA 194-B:11, III.

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Section 194-B:11

RSA 194-B:11 Chartered Public Schools; Funding. –

III. (a) In accordance with current department of education standards, the funding and educational decision-making process for children with disabilities attending a chartered public school shall be the responsibility of the resident district and shall retain all current options available to the parent and to the school district.

(b) When a child is enrolled by a parent in a chartered public school, the local education agency of the child's resident district shall convene a meeting of the individualized education program (IEP) team and shall invite a representative of the chartered public school to that meeting. At the meeting, the IEP team shall determine how to ensure the provision of a free and appropriate public education in accordance with the child's IEP. The child's special education and related services shall be provided using any or all of the methods listed below starting with the least restrictive environment:

- (1) The resident district may send staff to the chartered public school; or
- (2) The resident district may contract with a service provider to provide the services at the chartered public school; or
- (3) The resident district may provide the services at the resident district school; or
- (4) The resident district may provide the services at the service provider's location; or
- (5) The resident district may contract with a chartered public school to provide the services; and
- (6) If the child requires transportation to and/or from the chartered public school before, after, or during the school day in order to receive special education and related services as provided in the IEP, the child's resident district shall provide transportation for the child.

(c) Consistent with section 5210(1) of the Elementary and Secondary Education Act and section 300.209 of the Individuals with Disabilities Education Act, when a parent enrolls a child with a disability in a chartered public school, the child and the child's parents shall retain all rights under federal and state special education law, including the child's right to be provided with a free and appropriate public education, which includes all of the special education and related services included in the child's IEP. The child's resident district shall have the responsibility, including financial responsibility, to ensure the provision of the special education and related services in the child's IEP, and the chartered public school shall cooperate with the child's resident district in the provision of the child's special education and related services.